

¹ 5 U.S.C. § 8101 *et seq.*

related to factors of her federal employment. She first became aware of her condition on December 22, 2011 and first attributed it to her federal employment duties on October 1, 2013. On the reverse side of the claim form the employing establishment advised that appellant had previously worked as a pharmacy technician. Appellant subsequently began working as a medical support technician due to back and neck injuries.

In an undated statement received by OWCP on July 3, 2017, appellant related that she had sustained a prior employment injury, assigned OWCP File No. xxxxxx511. When she resumed work after this injury, she had experienced pain in her low back, bilateral shoulders, and neck, swelling in her bilateral legs, ankles, and feet, and high blood pressure. Appellant attributed her conditions to extensive standing, reaching, bending, and using a high chair without support for her back or feet while performing her job duties. She related that she had initially filed a notice of recurrence of disability, but a supervisor had instructed her to file an occupational disease claim.

A notification of personnel action (SF-50) indicated that appellant's position changed from pharmacy technician to medical support assistant effective January 26, 2014. The form indicated that she had requested the action taken.

On October 1, 2013 a physician assistant treated appellant at the emergency department for neck, back, and ankle pain.

In a report dated November 21, 2014, Dr. Joshua A. Thomas, an osteopath, related that appellant had sustained an injury to her back and neck on December 22, 2010 after a stool that she was sitting on had slipped. He found that she required work restrictions. In a report dated August 31, 2016, Dr. Thomas again found that appellant required work restrictions due to a December 22, 2010 employment injury.

In a development letter dated July 6, 2017, OWCP advised appellant that the evidence was insufficient to establish that she had provided timely notification of injury, actually experienced the alleged employment factor, or sustained a diagnosed condition due to an employment activity. It notified her of the type of additional evidence needed, including a detailed factual statement describing the activities that she believed contributed to her condition and a report from her attending physician addressing the causal relationship between any diagnosed condition and factors of her federal employment. OWCP afforded appellant 30 days to submit the requested evidence. No response was received.

By decision dated September 21, 2017, OWCP denied appellant's claim as she had failed to submit sufficient factual evidence to establish the occurrence of the events she described. It noted that she had failed to provide medical evidence establishing a diagnosed condition due to her employment. OWCP also noted that appellant had initially filed a notice of recurrence claiming disability under OWCP File No. xxxxxx511 on April 28, 2016 and thus, determined that she had filed an original claim form within three years from January 25, 2014, the date of last work exposure as a pharmacy technician.

Appellant, on October 1, 2017, requested a telephonic hearing before an OWCP hearing representative.

A telephonic hearing, was held on March 9, 2018, where appellant related that she worked in the position of medical support assistant at the time she filed her occupational disease claim, but that her initial injury had been aggravated while she was working in the pharmacy. She advised that the position required long periods of sitting and repetitively getting up to assist patients. Appellant indicated that she had previously filed a claim, assigned OWCP File No. xxxxxx511, for an injury that had occurred when a stool collapsed and she had fallen to the floor. She began working as a medical support assistant as an accommodation. Appellant asserted that sitting for extended periods caused poor circulation and nerve pain, that answering the telephone caused neck tension, and that getting up and down helping patients with paperwork had caused increased pain, tingling, headaches, and stiffness. The hearing representative informed her that OWCP had not administratively combined her claims and advised that she needed to submit medical evidence addressing whether she sustained a diagnosed condition due to the identified work duties. In a report dated March 26, 2018, Dr. Thomas related that he had begun treating appellant in October 2013 for low back and neck pain after a stool that she had been sitting on slipped. He diagnosed cervical disc disorder at C5-6 with radiculopathy, myalgia, lumbar spondylolisthesis, right shoulder impingement, and sacroiliitis. Dr. Thomas related, “[Appellant’s] work does require long periods of sitting, constant getting up and down from a chair in a short time frame, [and] constant use of [the] [tele]phone which aggravates the pain in her neck and shoulders.” He advised that she required modified duty.

By decision dated May 23, 2018, OWCP’s hearing representative affirmed the September 21, 2017 decision. She found that appellant had established the occurrence of the identified work factors, but that the medical evidence was insufficient to establish that she had sustained a diagnosed condition causally related to the accepted factors of her federal employment. The hearing representative noted that OWCP had accepted lumbar sprain and neck sprain under OWCP File No. xxxxxx511.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

In an occupational disease claim, appellant’s burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical

² 5 U.S.C. § 8101 *et seq.*

³ *M.S.*, Docket No. 18-1280 (issued March 12, 2019).

⁴ *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment.

Appellant submitted an October 1, 2013 report from a physician assistant, who treated her at the emergency department for neck, back, and ankle pain. However, this report has no probative value as a physician assistant is not considered a physician as defined under FECA.⁷

In 2014 and 2016 reports, Dr. Thomas advised that appellant required work restrictions due to a December 22, 2010 employment injury. As Dr. Thomas did not opine whether she had sustained a diagnosed condition causally related to the accepted employment factors, his opinion is insufficient to meet her burden of proof.⁸

In a report dated March 26, 2018, Dr. Thomas noted that appellant had experienced neck and back pain after a stool that she had been sitting on slipped. He diagnosed cervical disc disorder at C5-6 with radiculopathy, myalgia, lumbar spondylolisthesis, right shoulder impingement, and sacroiliitis. Dr. Thomas found that appellant's employment duties, including extensive sitting, repeatedly getting up and down from a chair, and using the telephone, had aggravated her neck and shoulder pain. He did not, however, attribute a specific condition to the accepted employment duties or provide rationale for his causation finding. Medical conclusions unsupported by rationale are of little probative value.⁹ Additionally, Dr. Thomas diagnosed increased pain due to appellant's employment duties, but a diagnosis of pain does not constitute the basis for the payment of compensation under FECA as pain is considered a symptom rather than a diagnosis.¹⁰

⁵ *P.D.*, Docket No. 17-1885 (issued September 17, 2018).

⁶ *R.P.*, Docket No. 17-1914 (issued November 27, 2018).

⁷ 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentist, clinical psychologists, optometrist, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law); *see also K.S.*, Docket No. 18-0954 (issued February 26, 2019).

⁸ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁹ *See T.A.*, Docket No. 18-0431 (issued November 7, 2018).

¹⁰ *T.T.*, Docket No. 17-0681 (issued March 13, 2018).

On appeal appellant notes that she submitted a report from her attending physician, Dr. Thomas. As discussed, however, his report is insufficiently reasoned to establish causation between a diagnosed condition and the accepted employment factors. As appellant has not submitted rationalized medical evidence, the Board finds that she has not met her burden of proof to establish an occupational disease claim.¹¹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹¹ *P.D.*, *supra* note 5.